STATE OF MICHIGAN

COURT OF APPEALS

ANITA STEWARD,

Plaintiff-Appellee,

v

SCHOOL DISTRICT OF THE CITY OF FLINT, BOARD OF EDUCATION OF THE SCHOOL DISTRICT OF THE CITY OF FLINT, and/or FLINT COMMUNITY SCHOOLS, a governmental entity, CAROL McINTOSH, individually, JOYCE ELLIS-MCNEAL, individually, DANIELLE GREEN, individually, and LAURA MacINTYRE, individually,

Defendants-Appellants.

FOR PUBLICATION
May 11, 2023
9:05 a.m.

Nos. 361112 and 361120
Genesee Circuit Court
LC No. 21-116171-CZ

Before: BOONSTRA, P.J., and GADOLA and YATES, JJ.

YATES, J.

Plaintiff, Anita Steward, was hired by defendants to serve as the superintendent of schools for the city of Flint. In that capacity, she worked under a written employment agreement that had a broad arbitration clause for resolution of disputes. The signatories to that bilateral contract were plaintiff and the "Board of Education of the School District of the City of Flint." Plaintiff clashed with several members of the board of education, including defendants Carol McIntosh, Joyce Ellis-McNeal, Danielle Green, and Laura MacIntyre (the board members). Plaintiff complained that the board members were creating a hostile work environment, and the dispute culminated in plaintiff's removal and replacement with an interim superintendent. After plaintiff filed suit against the board members, they moved for summary disposition under MCR 2.116(C)(7) based on the contractual arbitration provision. The trial court granted relief to all of the entity defendants,[1] but not the board

[1] Plaintiff's complaint listed as defendants "School District of the City of Flint, Board of Education of the School District of the City of Flint, and/or Flint Community Schools." During the litigation,

members because they were not parties to the employment agreement that contained the arbitration provision. On reconsideration, the trial court reaffirmed its ruling that all of the claims against the board members should be resolved in court, not in arbitration. We reverse the denial of summary disposition under MCR 2.116(C)(7) because the obligation to arbitrate disputes in this case extends to the board members as well as the school district they were elected to represent.

I. FACTUAL BACKGROUND

As the capstone of her distinguished career in public education, plaintiff was hired to serve as the superintendent of the Flint School District. She executed an employment agreement with the school district and began her tenure as superintendent on July 1, 2020. According to her complaint, the 2020 general election ushered in a significant change in membership on the board of education. Plaintiff alleges that the board members began micromanaging her work and the district's business. That, in turn, prompted plaintiff to complain about her treatment, so an attorney acting at the behest of the school district conducted an investigation and found defects in the board members' actions. The relationship between plaintiff and the board members soured in the wake of that investigation. After the board members threatened plaintiff with dismissal if she had unsupervised conversations with "partners and community foundations," the school board removed plaintiff as superintendent and replaced her with an interim superintendent.

In September 2021, plaintiff filed suit against the board members and others, accusing the board members of violating the Whistleblower Protection Act and the Elliott-Larsen Civil Rights Act, engaging in tortious interference with her employment agreement, and engaging in acts that constituted "gross negligence" for purposes of the governmental tort liability act (GTLA), MCL 691.1407(2). Plaintiff's complaint also requested revocation of the arbitration provision contained in plaintiff's employment agreement. Defendants responded by moving for summary disposition under MCR 2.116(C)(7) based on the arbitration provision and the immunity conferred under the GTLA. The trial court ruled from the bench that the entity defendants, including the school district and the board of education, were entitled to resolution of plaintiff's claims through arbitration, as opposed to litigation. Plaintiff has not challenged that ruling on appeal. In contrast, the trial court concluded that the board members could not avail themselves of the arbitration provision set forth in the employment agreement because they were not parties to that contract. The board members moved for reconsideration, but the trial court stood firm, explaining in a written opinion that none of the board members enjoyed the protection of the arbitration clause in the employment agreement and none of the board members had presented factual support for immunity under the GTLA.

The board members responded to the trial court's decision by filing an appeal of right from the denial of immunity under the GTLA and seeking leave to appeal from the trial court's refusal to order plaintiff to arbitrate her claims against them. We granted the board members' application for leave to appeal, see *Steward v Sch Dist of the City of Flint*, unpublished order of the Court of Appeals, issued October 6, 2022 (Docket No. 361120), and then consolidated the two appeals. See *Steward v Sch Dist of the City of Flint*, unpublished order of the Court of Appeals, issued November 2, 2022 (Docket Nos. 361112 and 316120). Whether a dispute is subject to arbitration

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plaintiff drew no distinction among those three parties, which we shall identify collectively as the entity defendants. None of those parties is involved in this appeal.

constitutes a "threshold question," *Lichon v Morse*, 507 Mich 424, 437; 968 NW2d 461 (2021), so we must resolve that issue before addressing the GTLA. Thus, we shall focus, first and foremost, upon whether the board members can avail themselves of the arbitration provision that is contained in plaintiff's employment agreement.

II. LEGAL ANALYSIS

A trial court's decision on a motion for summary disposition under MCR 2.116(C)(7) based on an arbitration provision in a contract is subject to de novo review.[2] *Altobelli v Hartmann*, 499 Mich 284, 294-295; 884 NW2d 537 (2016). " 'Arbitration is a matter of contract' " so "we apply the same legal principles that govern contract interpretation" when we interpret an agreement to arbitrate a dispute. *Id.* at 295. " 'It goes without saying that a contract cannot bind a nonparty.' " *American Federation of State, Co and Muni Employees, Council 25 v Wayne Co*, 292 Mich App 68, 80; 811 NW2d 4 (2011). But our Supreme Court has held that principles of agency govern the analysis of whether an individual defendant may rely upon an arbitration provision contained in a contract signed by a principal. See *Altobelli*, 499 Mich at 296. More broadly, we have stated that "nonsignatories of arbitration agreements can still be bound by an agreement pursuant to ordinary contract-related legal principles, including incorporation by reference, assumption, agency, veil-piercing/alter ego, and estoppel." *AFSCME, Council 25*, 292 Mich App at 81. With those concepts in mind, we can turn to consideration of whether the elected board members can avail themselves of the arbitration provision in the contract that the school district itself signed.

Before our Supreme Court decided *Altobelli*, "no Michigan court ha[d] explicitly applied agency principles when interpreting an arbitration clause[.]" *Altobelli*, 499 Mich at 296. Breaking new ground, the Court explained that "a company is not a physical being capable of taking its own actions or making its own decisions." *Id*. at 297. Because "a firm cannot act on its own behalf[,]" *id*., "the acts of officers and agents of a corporation, within the scope of their employment, are the acts of the corporation." *Id*. (quotation marks omitted). As the Court observed, "a corporation can only act through its employees, and an arbitration agreement would be of little value if it did not extend to them." *Id*. at 298 (quotation marks and brackets omitted). Thus, the Court ruled "that agency principles apply in determining who is included within the scope of an arbitration clause." *Id*. at 299. Applying that principle in the context of this dispute involving indistinguishable factual claims against a public-school-district employer and its individual agents, those who act on behalf of the school district—and especially its elected leaders—may avail themselves of an arbitration provision contained in a bilateral contract between the school district itself and its superintendent who oversees management of the district's operations. After all, the board members select the superintendent, who then acts under their authority for the school district. To deprive the board members of the arbitration provision in the employment agreement that was signed by the district

[2] In addressing a motion for summary disposition under MCR 2.116(C)(7), "[t]he contents of the complaint are accepted as true unless contradicted by documentation submitted by the movant." *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). Therefore, we have relied on the allegations in plaintiff's complaint to establish the facts pertinent to defendants' motion pursuant to MCR 2.116(C)(7).

and its superintendent would nullify "the effect of the rule requiring arbitration[.]" *Id*. (quotation marks omitted). Thus, we conclude that the trial court erred in denying the board members the ability to demand arbitration under the employment agreement between plaintiff and the district.[3]

Plaintiff argues unpersuasively that *Altobelli* affords defendants no assistance in their effort to arbitrate their dispute with plaintiff. First, plaintiff relies on our unpublished opinion in *Riley v Ennis*, unpublished per curiam opinion of the Court of Appeals, issued February 25, 2010 (Docket No. 290510), for the proposition that non-signatories to a contract cannot avail themselves of an arbitration provision set forth in the contract. But *Riley* was issued years before our Supreme Court ruled in *Altobelli* "that agency principles apply to determining who is included within the scope of the arbitration clause." *Altobelli*, 499 Mich at 299. Moreover, we have said in a published opinion that "the broad language of [an] arbitration clause . . . vests the arbitrator with the authority to hear plaintiffs' . . . claims, even if they involve nonparties to the agreement" that contains the arbitration clause. *Rooyakker & Sitz, PLLC v Plante & Moran, PLLC*, 276 Mich App 146, 163; 742 NW2d 409 (2007). Accordingly, we reject plaintiff's argument that the board members are foreclosed as a matter of law from relying upon the arbitration provision in the employment agreement that they did not sign. See *AFSCME, Council 25*, 292 Mich App at 81.

Having concluded that the board members may rely upon the arbitration provision, we must next "consider whether that provision encompasses the subject matter of the dispute at issue in this case." *Altobelli*, 499 Mich at 299. The arbitration provision in plaintiff's employment agreement states as follows:

> Any and all disputes, controversies or claims arising out of or in connection with or relating to this Agreement, or any breach or alleged breach thereof, and any claim that the District violated any state or federal statute, including but not limited to: the Michigan Elliott-Larsen Civil Rights Act, the Michigan Persons with Disabilities Civil Rights Act, the Michigan Freedom of Information Act, the Age Discrimination in Employment Act, and Title VII of the Civil Rights Act of 1964, all as amended; Michigan common law doctrines; or tort claims relating to the employment relationship with the District shall, upon the request of the party involved, be submitted to and settled by binding arbitration in the State of Michigan pursuant to the Michigan Arbitration Act, MCL 600.5001 *et seq*, and MCR 3.602, and shall be subject to the following terms:
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> 1. The parties specifically agree to arbitrate with the other party in a joint proceeding regarding all common issues and disputes. Neither party may litigate such claims against each other in court. This agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law.

[3] Plaintiff insists that *Altobelli* has no application here because the board members were not acting within the scope of their official duties when they participated in the acts giving rise to the claims in plaintiff's complaint. But nothing in the complaint suggests that plaintiff had any relationship with any of the board members other than their school-related engagement. Thus, we find no basis to distinguish *Altobelli* from this case on the ground suggested by plaintiff.

The sweeping language of that provision manifestly encompasses each of the claims presented in plaintiff's complaint. For example, the arbitration provision specifically includes claims under the Elliott-Larsen Civil Rights Act, which describes Count II of plaintiff's complaint. Similarly, under the arbitration provision, all "tort claims relating to the employment relationship with the District" must be arbitrated, so plaintiff's claims for tortious interference in Count III and gross negligence in Count V fall within the arbitration obligation. Finally, plaintiff's Whistleblower Protection Act claim in Count I fits comfortably within the arbitration provision's reference to "any claim that the District violated any state or federal statute[.]"[4]

To the extent plaintiff asserts that she has alleged conduct that falls beyond the reach of the arbitration provision, her contention is necessarily unavailing. Our Supreme Court has cautioned that, "[i]n deciding the threshold question of whether a dispute is arbitrable, a reviewing court must avoid analyzing the substantive merits of the dispute." *Altobelli*, 499 Mich at 296. Whenever "the dispute is arbitrable, 'the merits of the dispute are for the arbitrator.' " *Id.* For that reason, we not only reject plaintiff's argument that her case involves claims outside the arbitration provision, but also decline the parties' invitation to consider whether immunity conferred by the GTLA shields the board members from civil liability. Having determined that plaintiff's claims against the board members must be resolved in arbitration, our work on this dispute is complete.

Reversed and remanded for entry of an order awarding summary disposition to the board members under MCR 2.116(C)(7). We do not retain jurisdiction.

/s/ Christopher P. Yates
/s/ Mark T. Boonstra
/s/ Michael F. Gadola

[4] Curiously, plaintiff's complaint does not include a Count IV between Count III and Count V.